AIFC AUTHORISED MARKET INSTITUTION RULES

(AMI)

AIFC RULES NO. FR0002 OF 2017

(with amendments as of 24 June 2019, which commence on 24 June 2019)

Approval Date: 17 October 2017

Commencement Date: 1 January 2018

Nur-Sultan, Kazakhstan

CONTENTS

Guidance: Purpose and application of AMI

The rules and guidance in AMI complement Chapter 2 of Part 3 of the Framework Regulations (Licensing of Authorised Market Institutions) and Part 6 of the Framework Regulations (Capital Markets). AMI also contains rules in relation to the supervision of Authorised Market Institutions which complement the provisions in Part 8 of the Framework Regulations (Supervision of Authorised Persons) and Chapter 7 of the GEN rulebook (Supervision). The purpose of the rules and guidance in AMI is to set out:

- the licensing requirements, or standards, which an applicant must satisfy to be granted a Licence to carry on either of the Market Activities of Operating an Investment Exchange, Operating Private E-currency Trading Facility and Operating a Clearing House;

- the various regulatory functions that an Authorised Market Institution must perform in relation to admitting Securities or Units in a Listed Fund to trading, operating an Official List and enforcing its Business Rules; and

- the supervisory regime to which such an Authorised Market Institution will be subject on an ongoing basis, including requirements in respect of its relationship with the AFSA.

The application of the rules in AMI is as follows:

- Chapter 1 contains introductory provisions applicable to all Authorised Market Institutions.

- Chapter 2 contains rules and guidance applicable to all Authorised Market Institutions.

- Chapter 3 contains additional rules and guidance applicable to Authorised Investment Exchanges.

- Chapter 4 contains additional rules and guidance applicable to Authorised Clearing Houses (including Authorised Central Counterparties).

- Chapter 5 contains rules in relation to the supervision of Authorised Market Institutions.

- Chapter 6 contains additional rules and guidance applicable to Authorised Private E-currency Trading Facility.

- Chapter 7 contains additional rules and guidance applicable to Authorised Crowdfunding Platforms.

1. INTRODUCTION

1.1. Introduction

1.1.1. Definitions

(1) An Authorised Market Institution is a Centre Participant which has been licensed by the AFSA to carry on one or more Market Activities. An Authorised Market Institution can be an Authorised Investment Exchange, an Authorised Private E-currency Trading Facility, an Authorised Clearing House and/or an Authorised Crowdfunding Platform.

(2) An Authorised Investment Exchange is a Centre Participant which has been licensed by the AFSA to carry on the Market Activity of Operating an Investment Exchange.

(3) An Authorised Clearing House is a Centre Participant which has been licensed by the AFSA to carry on the Market Activity of Operating a Clearing House.

(4) A central counterparty is a legal Person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

(5) An Authorised Central Counterparty is a central counterparty which is declared by an order made by the AFSA under these Rules for the time being in force to be an Authorised Central Counterparty.

(6) A Member of an Authorised Market Institution is a Person who is entitled, under an arrangement or agreement between him and the Authorised Market Institution, to use that institution's facilities.

(7) An Authorised Private E-currency Trading Facility is a Centre Participant which has been licensed by the AFSA to carry on the Market Activity of Operating a Private E-currency Trading Facility.

(8) An Authorised Crowdfunding Platform is a Centre Participant which has been licensed by the AFSA to carry on the Market Activity of Operating a Loan Crowdfunding Platform and/or Operating an Investment Crowdfunding Platform.

1.1.2. Outsourcing

An Authorised Market Institution may satisfy the requirements applying to it under these Rules by making arrangements for functions to be performed on its behalf by any other Person. In such circumstances:

(a) An Authorised Market Institution must, before entering into any outsourcing arrangements with a service provider, obtain the AFSA's prior approval to do so.

(b) For the avoidance of doubt, the requirement in sub-paragraph (a) applies to any outsourcing arrangements which were not in existence at the time the Authorised Market Institution was granted a Licence.

(c) Outsourcing arrangements made by an Authorised Market Institution do not affect the responsibility of the Authorised Market Institution to satisfy the requirements applying to it, but there is in addition a requirement applying to the Authorised Market Institution that the Person who performs (or is to perform) the functions is a fit and proper Person who is able to perform them.

(d) An Authorised Market Institution that outsources any functions must comply with the outsourcing requirements in GEN.

2. RULES APPLICABLE TO ALL AUTHORISED MARKET INSTITUTIONS

2.1. Requirements in GEN

Guidance

An Authorised Market Institution is an Authorised Person to which the following provisions of GEN are applicable either directly or in respect of its officers and Employees who are Approved Individuals or Designated Individuals:

(a) GEN 2: Controlled and Designated Functions;

(b) GEN 3: Control of Authorised Persons;

(c) GEN 4: Core Principles;

(d) GEN 5: Systems and Controls;

(e) GEN 6: Supervision

Rules in this chapter supplement, and should be read in conjunction with, the Rules in GEN.

2.2. Financial resources

2.2.1. Minimum capital requirement

An Authorised Market Institution must hold the following minimum capital:

(a) an amount equal to 6 months' operational expenses; plus

(b) unless the AFSA directs otherwise, an additional amount of up to a further 6 months' operational expenses.

2.3. Conflicts of interest

2.3.1. Conflicts of interest – core obligation

An Authorised Market Institution must take reasonable steps, including the maintenance of adequate systems and controls, governance and internal policies and procedures, to ensure that the performance of its regulatory functions is not adversely affected by its commercial interests.

Guidance: regulatory functions of Authorised Market Institution

The regulatory functions of an Authorised Market Institution include, as appropriate:

- its obligations under AMI to monitor and enforce compliance with its membership rules, Business Rules, Direct Electronic Access Rules;
- its obligation to prevent, detect and report market abuse or financial crime; and
- its obligations in respect of admission of Securities or Units in a Listed Fund to an Official List, to Trading or to Clearing.

2.3.2. Conflicts of interest – identification and management

For the purposes of compliance with AMI 2.3.1, an Authorised Market Institution must:

(a) identify conflicts between the interests of the Authorised Market Institution, its shareholders, owners and operators and the interests of the Persons who make use of its facilities or the interests of the trading venues operated by it; and

(b) manage or disclose such conflicts so as to avoid adverse consequences for the sound functioning and operation of the trading venues operated by the Authorised Market Institution and for the Persons who make use of its facilities.

2.3.3. Conflicts of interest – personal account transactions

An Authorised Market Institution must establish and maintain adequate policies and procedures to ensure that its Employees do not undertake personal account transactions in Investments in a manner that creates or has the potential to create conflicts of interest.

2.3.4. Conflicts of interest – code of conduct

An Authorised Market Institution must establish a code of conduct that sets out the expected standards of behaviour for its Employees, including clear procedures for addressing conflicts of interest. Such a code must be binding on Employees.

2.4. Technology resources

2.4.1. Sufficient resources

An Authorised Market Institution must have sufficient technology resources to continually operate, maintain and supervise its facilities.

2.4.2. Confidentiality

The Authorised Market Institution must take reasonable steps to ensure that its information, records and data are secure and the confidentiality is maintained

2.4.3. Cyber-security

The Authorised Market Institution must take reasonable steps to ensure that its information technology systems are reliable and adequately protected from external attack or incident.

2.4.4. Resources of Members

(1) An Authorised Market Institution must ensure that its Members and other participants on its facilities have sufficient and secure technology resources which are compatible with its own.

(2) The requirements in (1) do not apply to:

(a) an Authorised Crowdfunding Platform (or its Clients); or

(b) the Member of an Authorised Private E-currency Trading Facility if the Member is a body corporate or an individual (natural person) that carries on the activity solely as principal.

2.4.5. On-going monitoring

For the purposes of meeting the requirement in AMI 2.4.1, an Authorised Market Institution must have adequate procedures and arrangements for the evaluation, selection and on-going maintenance and monitoring of information technology systems. Such procedures and arrangements must, at a minimum, provide for:

(a) problem management and system change;

(b) testing information technology systems before live operations in accordance with the requirements in AMI 2.4.6 and 2.4.7;

(c) real time monitoring and reporting on system performance, availability and integrity; and

(d) adequate measures to ensure:

(i) the information technology systems are resilient and not prone to failure;

(ii) business continuity in the event that an information technology system fails;

(iii) protection of the information technology systems from damage, tampering, misuse or unauthorised access; and

(iv) the integrity of data forming part of, or being processed through, information technology systems.

2.4.6. Testing of technology systems

An Authorised Market Institution must, before commencing live operation of its information technology systems or any updates thereto, use development and testing methodologies in line with internationally accepted testing standards in order to test the viability and effectiveness of such systems. For this purpose, the testing must be adequate for the Authorised Market Institution to obtain reasonable assurance that, among other things:

(a) the systems enable it to comply with all the applicable requirements, including legislation, on an on-going basis;

(b) the systems can continue to operate effectively in stressed market conditions;

(c) the systems have sufficient electronic capacity to accommodate reasonably foreseeable volumes of messaging and orders;

(d) the systems are adequately scalable in emergency conditions that might threaten the orderly and proper operations of its facility; and

(e) any risk management controls embedded within the systems, such as generating automatic error reports, work as intended.

2.4.7. Testing relating to Members' technology systems

(1) An Authorised Market Institution must implement standardised conformance testing procedures to ensure that the systems which its Members are using to access facilities operated by it have a minimum level of functionality that is compatible with the Authorised Market Institution's information technology systems and will not pose any threat to fair and orderly conduct of its facilities.

(2) An Authorised Market Institution must also require its Members, before commencing live operation of any electronic trading system, user interface or a trading algorithm, including any updates to such arrangements, to use adequate development and testing methodologies to test the viability and effectiveness of their systems, to include system resilience and security.

(3) For the purposes of (2), an Authorised Market Institution must require its Members:

(a) to adopt trading algorithm tests, including tests in a simulation environment which are commensurate with the risks that such a strategy may pose to itself and to the fair and orderly functioning of the facility operated by the Authorised Market Institution; and

(b) not to deploy trading algorithms in a live environment except in a controlled and cautious manner.

(4) The requirements in (1)-(3) do not apply to:

(a) an Authorised Crowdfunding Platform (or its Clients); or

(b) the Member of an Authorised Private E-currency Trading Facility if the Member is a body corporate or an individual (natural person) that carries on the activity solely as principal.

2.4.8. Regular review of systems and controls

(1) An Authorised Market Institution must undertake regular review and updates of its information technology systems and controls as appropriate to the nature, scale and complexity of its operations.

(2) For the purposes of (1), an Authorised Market Institution must adopt well defined and clearly documented development and testing methodologies which are in line with internationally accepted testing standards.

2.5. Business Rules

2.5.1. Requirement to prepare Business Rules

Save where the AFSA otherwise directs, an Authorised Market Institution must establish and maintain Business Rules governing relations between itself and the participants in the market, including but not limited to:

(a) Membership Rules, prepared in accordance with AMI 2.6, governing the admission of Members and any other Persons to whom access to its facilities is provided;

(b) Direct Electronic Access Rules, prepared in accordance with AMI 2.7, setting out the rules and conditions pursuant to which its Members may provide their clients with Direct Electronic Access to the Authorised Market Institution's trading systems;

(c) Default Rules, prepared in accordance with either AMI 3.5 or AMI 4.6, governing action that may be taken in respect of unsettled Market Contracts in the event of a Member being, or appearing to be, unable to meet its obligations;

(d) Admission to Trading Rules, prepared in accordance with AMI 3.2 or AMI 6.3, or Admission to Clearing Rules, prepared in accordance with AMI 4.1, governing the

admission of Securities, Units in a Listed Fund or Private E-currencies to trading, or clearing and settlement, as appropriate to its facilities;

(e) Listing Rules, prepared in accordance with AMI 3.6, setting out the rules and conditions applicable to a Person who wishes to have Securities or Units in a Listed Fund included in an Official List; and

(f) any other matters necessary for the proper functioning of the Authorised Market Institution and the facilities operated by it.

The requirements in (c) and (e) do not apply to the Authorised Private E-currency Trading Facility.

2.5.2. Content and effect of Business Rules

An Authorised Market Institution's Business Rules must:

(a) be based on objective criteria;

(b) be non-discriminatory;

(c) be clear and fair;

(d) set out the Members' and other participants' obligations:

(i) arising from the Authorised Market Institution's constitution and other administrative arrangements;

(ii) when undertaking transactions on its facilities; and

(iii) relating to professional standards that must be imposed on staff and agents of the Members and other participants when undertaking transactions on its facilities;

(e) be made publicly available free of charge;

(f) contain provisions for the resolution of Members' and other participants' disputes and an appeal process from the decisions of the Authorised Market Institution, whether by an internal but independent body or otherwise; and

(g) contain disciplinary procedures, including any sanctions that may be imposed by the Authorised Market Institution against its Members and other participants.

2.5.3. Review, amendment and consultation

The Authorised Market Institution must ensure that appropriate procedures are adopted for it to keep its Business Rules under annual review and to amend them. The procedures must include procedures for consulting users of the Authorised Market Institution's facilities in appropriate cases.

2.5.4. Amendment of rules

Any amendment to an Authorised Market Institution's Business Rules must, prior to the amendment being effective, be:

(a) made available for market consultation for no less than 30 days; and

(b) approved by the AFSA.

2.5.5. Waiver of consultation requirement

The AFSA may waive or modify the requirement for market consultation in AMI 2.5.4(a) where it considers it necessary or desirable to do so, including but not limited to, cases of emergency, force majeure, typographical errors, minor administrative matters, or to comply with applicable laws.

2.5.6. Monitoring and enforcing compliance with Business Rules

The Authorised Market Institution must have effective arrangements for monitoring and enforcing compliance with its Business Rules including procedures for:

(a) prompt investigation of complaints made to the Authorised Market Institution about the conduct of Persons in the course of using the Authorised Market Institution's facilities; and

(b) where appropriate, disciplinary action resulting in financial and other types of penalties.

2.5.7. Financial penalties

Where arrangements made pursuant to AMI 2.5.6 include provision for requiring the payment of financial penalties, they must include arrangements for ensuring that any amount so paid is applied only in one or more of the following ways:

(a) towards meeting expenses incurred by the Authorised Market Institution in the course of the investigation of the breach or course of conduct in respect of which the penalty is paid, or in the course of any appeal against the decision of the Authorised Market Institution in relation to that breach or course of conduct; or

(b) for the benefit of users of the Authorised Market Institution's facilities.

2.5.8. Appeals

Arrangements made pursuant to AMI 2.5.6 must include provision for fair, independent and impartial resolution of appeals against decisions of the Authorised Market Institution.

The requirements in AMI 2.5 do not apply to an Authorised Crowdfunding Platform.

2.6. Membership

2.6.1. Persons eligible for Membership

(1) An Authorised Market Institution, except an Authorised Private E-currency Trading Facility, may only admit as a Member a Person who satisfies admission criteria set out in its Membership Rules and who is either:

(a) an Authorised Firm whose Licence permits it to carry on the Regulated Activities of Dealing in Investments; or

(b) a Recognised Non-AIFC Member.

(2) An Authorised Private E-currency Trading Facility may only admit as a Member a Person who satisfies admission criteria set out in its Membership Rules and which is:

(a) an Authorised Firm whose Licence permits it to carry on the Regulated Activities of Dealing in Investments;

(b) a Recognised Non-AIFC Member; or

(c) a body corporate or an individual (natural person) which carries on the activity solely as principal.

2.6.2. Admission criteria

An Authorised Market Institution must ensure that access to its facilities is subject to criteria designed to protect the orderly functioning of the market and the interests of investors.

2.6.3. Membership Rules

The Membership Rules of an Authorised Market Institution must specify the obligations imposed on users or Members of its facilities arising from:

(a) the constitution and administration of the Authorised Market Institution;

(b) where appropriate rules relating to transactions on its trading venues;

(c) admission criteria for Members;

(d) where appropriate rules and procedures for clearing and settlement of transactions; and

(e) where appropriate rules and procedures for the prevention of Market Abuse, money laundering and Financial Crime in accordance with AMI 2.8.

2.6.4. Undertaking to comply with AFSA rules

An Authorised Market Institution may not admit a Recognised Non-AIFC Member as a Member unless it:

(a) agrees in writing to submit unconditionally to the jurisdiction of the AFSA in relation to any matters which arise out of or which relate to its use of the facilities of the Authorised Market Institution;

(b) agrees in writing to submit unconditionally to the jurisdiction of the AIFC Courts in relation to any disputes, or other proceedings in the AIFC, which arise out of or relate to its use of the facilities of the Authorised Market Institution;

(c) agrees in writing to subject itself to the AIFC laws in relation to its use of the facilities of the Authorised Market Institution; and

(d) where the Recognised Non-AIFC Member is incorporated outside the Republic of Kazakhstan, appoints and maintains at all times, an agent for service of process in the Republic of Kazakhstan.

2.6.5. Lists of users or Members

The Authorised Market Institution must make arrangements regularly to provide the AFSA with a list of its Members.

The requirements in AMI 2.6 do not apply to an Authorised Crowdfunding Platform.

2.7. Direct Electronic Access

2.7.1. Direct Electronic Access

Direct Electronic Access means any arrangement, such as the use of the Member's trading code, through which a Member or the clients of that Member are able to transmit electronically orders relating to Securities, Units in a Listed Fund or Private E-currency directly to the facility provided by the Authorised Market Institution and includes arrangements which involve the use by a Person of the infrastructure of the Authorised Private E-currency Trading Facility or the Member or participant or client or any connecting system provided by the Authorised Private E-currency Trading Facility or Member or participant or client, to transmit the orders and arrangements where such an infrastructure is not used by a Person.

Guidance:

A Person who is permitted to have Direct Electronic Access to an Authorised Market Institution's facilities through a Member is not, by virtue of such permission, a Member of the Authorised Market Institution.

2.7.2. Direct electronic access – general conditions

An Authorised Market Institution may only permit a Member specified in AMI 2.6.1(1)(a) and (b) to provide its clients Direct Electronic Access to the Authorised Market Institution's facilities where the clients meet the suitability criteria established by the Member in order to meet the requirements in AMI 2.7.3.

2.7.3. Direct electronic access – criteria, standards and arrangements

An Authorised Market Institution which permits its Members to have direct electronic access to its trading facilities or permits its Members to allow their clients to have Direct Electronic Access to its trading facilities must:

(a) ensure that a Member allowing its clients to have direct electronic access to the trading facilities of an Authorised Market Institution is an Authorised Person;

(b) set appropriate standards regarding risk controls and thresholds on trading through Direct Electronic Access;

(c) be able to identify orders and trades made through Direct Electronic Access;

(d) be able to distinguish and, if necessary, stop orders or trades made by a client using Direct Electronic Access provided by the Member without affecting the other orders or trades made or executed by that Member; and

(e) have arrangements in place to suspend or terminate the provision of Direct Electronic Access in the case of non-compliance with this sub-paragraph.

2.7.4. Direct electronic access rules

An Authorised Market Institution operating a trading venue which permits Direct Electronic Access through it systems must set out and publish the rules and conditions pursuant to which its Members specified in AMI 2.6.1(1)(a) and (b) may provide Direct Electronic Access to their clients. Those rules and conditions must at least cover the specific requirements set out below:

(a) A Member must retain responsibility for the orders and trades executed by the clients who are using Direct Electronic Access.

(b) A Member must have adequate mechanisms to prevent the clients placing or executing orders using Direct Electronic Access in a manner that would result in the Member exceeding its position or margin limits.

(c) A Member must conduct annually or on request from AFSA a due diligence assessment of its prospective Direct Electronic Access clients to ensure they meet the rules of the trading venue to which it offers access.

(d) The due diligence assessment referred to in sub-paragraph (c) above must cover:

(i) the governance and ownership structure of the prospective Direct Electronic Access client;

(ii) the types of strategies to be undertaken by the prospective Direct Electronic Access client;

(iii) the operational set-up, the systems, the pre-trade and post-trade controls and the real-time monitoring of the prospective Direct Electronic Access client;

(iv) the responsibilities within the prospective Direct Electronic Access client for dealing with actions and errors;

(v) the historical trading pattern and behaviour of the prospective Direct Electronic Access client;

(vi) the level of expected trading and order volume of the prospective Direct Electronic Access client;

(vii) the ability of the prospective Direct Electronic Access client to meet its financial obligations to the Direct Electronic Access provider; and

(viii) the disciplinary history of the prospective Direct Electronic Access client, where available.

(e) A Member offering Direct Electronic Access allowing clients to use third-party trading software for accessing trading venues must ensure that the software includes pre-trade controls.

The requirements in AMI 2.7 do not apply to an Authorised Crowdfunding Platform.

2.8. Financial Crime and Market Abuse

2.8.1. Financial Crime

Financial Crime means any kind of conduct relating to money or to financial services or markets that would amount to criminal conduct under law of Republic of Kazakhstan (whether or not such conduct takes place in the Republic of Kazakhstan), including any offence involving:

(a) fraud or dishonesty;

(b) misconduct in, or misuse of information relating to, a financial market;

(c) handling the proceeds of crime; or

(d) the financing of terrorism.

2.8.2. Measures to prevent, detect and report market abuse or Financial Crime

An Authorised Market Institution must:

(a) ensure that appropriate measures (including the monitoring of transactions effected on or through the Authorised Market Institution's facilities) are adopted to reduce the extent to which the Authorised Market Institution's facilities can be used for a purpose connected with Market Abuse, Financial Crime or money laundering, and to facilitate their detection and monitor their incidence; and

(b) immediately report to the AFSA any suspected Market Abuse, Financial Crime or money laundering, along with full details of that information in writing.

2.8.3. Whistleblowing

An Authorised Market Institution must have appropriate procedures and protections for requiring its Employees to disclose any information to the AFSA in a manner which does not expose them to any disadvantage as a result of so doing.

2.9. Safeguarding and administration of assets

2.9.1. Safeguarding and administration of users' assets

An Authorised Market Institution must ensure that where its facilities include making provision for the safeguarding and administration of assets belonging to users of those facilities, satisfactory arrangements are made for that purpose with an appropriate custodian or settlement facility and clear terms of agreement between the users of the facility and the Authorised Market Institution.

2.9.2. Custody and investment risk

(1) An Authorised Market Institution must have effective means to address risks relating to:

(a) custody of its own assets, in accordance with (2), if it is an Authorised Clearing House;

(b) investments, in accordance with (3), if it is an Authorised Investment Exchange; or

(c) Private E-currencies, if it is an Authorised Private E-currency Trading Facility.

(2) For the purposes of (1)(a), an Authorised Clearing House must:

(a) hold its own assets with entities which are licensed for holding deposits or providing custody, as judged appropriate by the AFSA or a Financial Services Regulator acceptable to the AFSA;

(b) be able to have prompt access to its assets when required; and

(c) regularly evaluate and understand its exposures to entities which hold its assets.

(3) For the purposes of (1)(b), an Authorised Investment Exchange must ensure that:

(a) it has an investment strategy which is consistent with its overall risk-management strategy and is fully disclosed to its Members and other participants using its facilities;

(b) its investments comprise instruments with minimal credit, market, and liquidity risks; and

(c) its investments are secured by, or represent claims on, high-quality obligors, allowing for quick liquidation with little, if any, adverse price effect.

3. RULES APPLICABLE TO AUTHORISED INVESTMENT EXCHANGES

3.1. Systems and Controls

3.1.1. Fair and orderly trading

An Authorised Investment Exchange must ensure that it has transparent rules and procedures to provide for fair and orderly trading and to establish objective criteria for the efficient execution of orders.

3.1.2. Execution of orders

An Authorised Investment Exchange must have non-discretionary rules for the execution of orders.

3.1.3. Publicly available data on quality of executions

An Authorised Investment Exchange must make available to the public, without any charges, data relating to the quality of execution of transactions on the Authorised Investment Exchange on at least an annual basis. Reports must include details about price, costs, speed and likelihood of execution for individual Securities or Units in a Listed Fund.

3.1.4. Market making arrangements

An Authorised Investment Exchange must:

(a) have written agreements with all Members pursuing a Market Making Strategy by using its facilities (Market Making Agreements); and

(b) have schemes, appropriate to the nature and scale of a trading venue, to ensure that a sufficient number of Members enter into Market Making Agreements which require them to post firm quotes at competitive prices with the result of providing liquidity to the market on a regular and predictable basis; and

(c) monitor and enforce compliance with the Market Making Agreements;

(d) inform the AFSA of the content of its Market Making Agreements; and

(e) provide the AFSA with any information it requests which it reasonably requires to satisfy itself that the Market Making Agreements comply with sub-paragraph 3.1.4.

3.1.5. Trading controls

An Authorised Investment Exchange must be able to:

(a) reject orders that exceed its pre-determined volume and price thresholds, or that are clearly erroneous;

(b) temporarily halt or constrain trading on its facilities if necessary or desirable to maintain an orderly market; and

(c) cancel, vary, or correct any order resulting from an erroneous order entry and/or the malfunctioning of the system of a Member or of the Authorised Investment Exchange

3.1.6. Tick size regimes

The Authorised Investment Exchange must adopt a tick size regime in respect of each type of Security or Unit in a Listed Fund traded on each trading venue operated by it. The tick size regime must:

(a) be calibrated to reflect the liquidity profile of such Investments in different markets and the average bid-ask spread taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads; and

(b) be able to adapt the tick size for each such Investment appropriately.

3.1.7. Short selling and position management

(a) An Authorised Investment Exchange must have in place effective systems, controls and procedures to monitor and manage:

(i) Short selling in shares, debentures and any other similar Investments; and

(ii) Risks arising from position concentrations.

(b) For the purposes of (a), an Authorised Investment Exchange must have adequate powers over its Members to mitigate the probability and impact of risk to the orderly functioning of its facilities arising from unsettled positions in Securities or Units in a Listed Fund.

(c) Short selling for the purposes of this Rule constitutes the sale of a share, debenture or other similar Investments by a Person who does not own the share, debenture or other similar Investment at the point of entering into the contract to sell.

3.1.8. Liquidity incentive schemes

An Authorised Investment Exchange must not introduce a liquidity incentive scheme or any other scheme for encouraging bids on a trading venue or to increase the volume of business transacted unless it has obtained the AFSA's prior written approval for the scheme.

3.1.9. Settlement and Clearing facilitation services

An Authorised Investment Exchange must ensure that satisfactory arrangements are made for securing the timely discharge (whether by performance, compromise or otherwise), Clearing and settlement of the rights and liabilities of the parties to transactions effected on the Authorised Investment Exchange (being rights and liabilities in relation to those transactions).

3.2. Admission of Securities to trading

3.2.1. Admission to Trading Rules

An Authorised Investment Exchange must make clear and transparent rules concerning the admission of Securities or Units in a Listed Fund to trading on its facilities.

3.2.2. Content of Admission to Trading Rules

The rules of the Authorised Investment Exchange must ensure that:

(a) Securities or Units in a Listed Fund admitted to trading on an Authorised Investment Exchange's facilities are capable of being traded in a fair, orderly and efficient manner;

(b) Securities or Units in a Listed Fund admitted to trading on an Authorised Investment Exchange's facilities are freely negotiable; and

(c) contracts for derivatives admitted to trading on an Authorised Investment Exchange's facilities are designed so as to allow for their orderly pricing as well as for the existence of effective settlement conditions.

Guidance: Fair, orderly and efficient trading

When assessing whether a Security or Unit in a Listed Fund is capable of being traded in a fair, orderly and efficient manner, the Authorised Investment Exchange shall take into account, depending on the nature of the Security or Unit in a Listed Fund being admitted, whether the following criteria are satisfied:

(a) the terms of the Security or Unit in a Listed Fund are clear and unambiguous and allow for a correlation between the price of the Security or Unit in a Listed Fund and the price or other value measure of the underlying;

(b) the price or other value measure of the underlying is reliable and publicly available; and

(c) there is sufficient information publicly available of a kind needed to value the Security or Unit in a Listed Fund.

Guidance: Effective settlement conditions

When assessing whether a contract for a derivative contains effective settlement conditions, the Authorised Investment Exchange shall take into account, depending on the nature of the derivative being admitted, whether the following criteria are satisfied:

(a) the arrangements for determining the settlement price of the derivative ensure that this price properly reflects the price or other value measure of the relevant underlying Investment; and

(b) where the settlement of the derivative requires or provides for the possibility of the delivery of an underlying Investment or asset rather than cash settlement, there are adequate settlement and delivery procedures for that underlying Investment as well as adequate arrangements to obtain relevant information about that underlying Investment.

3.2.3. Undertaking to comply with AFSA rules

An Authorised Investment Exchange may not admit Securities or Units in a Listed Fund to trading unless the Person who seeks to have such Investments admitted to trading:

(a) gives an enforceable undertaking to the AFSA to submit unconditionally to the jurisdiction of the AFSA in relation to any matters which arise out of or which relate to its use of the facilities of the Authorised Market Institution, including but not limited to requirements in MAR relating to Reporting Entities;

(b) agrees in writing to submit unconditionally to the jurisdiction of the AIFC Courts in relation to any disputes, or other proceedings in the AIFC, which arise out of or relate to its use of the facilities of the Authorised Market Institution;

(c) agrees in writing to subject itself to the AIFC laws in relation to its use of the facilities of the Authorised Market Institution; and

(d) appoints and maintains at all times, an agent for service of process in the AIFC and requires such agent to accept its appointment for service of process.

3.2.4. Review of compliance

The Authorised Investment Exchange must maintain arrangements regularly to review whether the Securities or Units in a Listed Fund admitted to trading on its facilities comply with the Admission to Trading Rules.

3.2.5. Verification of compliance by issuers with Market Rules

The Authorised Investment Exchange must maintain effective arrangements to verify that issuers of Securities or Units in a Listed Fund admitted to trading on a regulated market operated by it comply with the Market Rules.

3.2.6. Arrangements for access to information

The Authorised Investment Exchange must maintain arrangements to assist users of a market operated by it to obtain access to information made public under the Market Rules.

3.3. Suspending or removing Securities or Units in a Listed Fund from trading

3.3.1. Power to suspend

The rules of an Authorised Investment Exchange must provide that the Authorised Investment Exchange has the power to suspend or remove from trading on its facilities any Securities or Units in a Listed Fund which no longer comply with its rules.

3.3.2. Limitation on power to suspend or remove Securities or Units in a Listed Fund from trading

An Authorised Investment Exchange may not suspend or remove from trading on its facilities any Security or Unit in a Listed Fund which no longer complies with its rules, where such step would be likely to cause significant damage to the interests of investors or the orderly functioning of the financial markets.

3.3.3. Suspension or removal from trading of associated derivatives

Where the Authorised Investment Exchange suspends or removes any Security or Unit in a Listed Fund from trading on its facilities, it must also suspend or remove from trading on its facilities any derivative that relates to or is referenced to that Investment where that is required to support the objectives of the suspension or removal of trading of that Investment.

3.3.4. Publication of decision to suspend or remove Securities or Units in a Listed Fund from trading

Where the Authorised Investment Exchange suspends or removes any Security or Unit in a Listed Fund from trading on its facilities, including any derivative in accordance with AMI 3.3.3, it must notify the AFSA and make that decision public.

3.3.5. Publication of decision to lift suspension or re-admit Securities or Units in a Listed Fund to trading

Where the Authorised Investment Exchange lifts a suspension or re-admits any Security or Unit in a Listed Fund to trading on its facilities, including any derivative suspended or removed

from trading in accordance with AMI 3.3.3, following a decision made under AMI 3.3.1, it must notify the AFSA and make that decision public.

3.4. Transparency obligations

3.4.1. Pre-trade transparency obligation

An Authorised Investment Exchange must make available to the public on a continuous basis during normal trading hours the current bid and offer prices of Securities or Units in a Listed Fund traded on its systems and the depth of trading interests at those prices.

Guidance

The disclosure required by 3.4.1 will depend upon the type of trading system employed, including continuous auction order-book, quote-driven, periodic auction and hybrid trading systems. An Authorised Investment Exchange should discuss its proposals for compliance with this requirement with the AFSA. The AFSA may waive or modify the requirement in respect of certain types of trade or types of Investment pursuant to Section 8 of the Framework Regulations.

3.4.2. Post-trade transparency obligation

An Authorised Investment Exchange must make available to the public in as close to real-time as technically possible the price, volume and time of the transactions executed in respect of Securities or Units in a Listed Fund traded on its facilities.

Guidance

The AFSA may waive or modify the requirement in AMI 3.4.2 in respect of certain types of trade or types of Investment pursuant to Section 8 of the Framework Regulations.

In particular, subject to AMI 1.1.2 (outsourcing) and to obtaining the approval of the AFSA, an Authorised Investment Exchange may delegate its provision of post-trade information to a regulatory news service or similar third party entity.

3.5. Default management

3.5.1. Default Rules

An Authorised Investment Exchange must have legally enforceable Default Rules which, in the event of a Member of the Authorised Investment Exchange being or appearing to be unable to meet his obligations in respect of one or more Market Contracts, enable it to suspend or terminate such Member's Membership and cooperate by sharing information with its Authorised Clearing House or Recognised Non-AIFC Clearing House, and enable action to be taken in respect of unsettled Market Contracts to which that Member is a party.

Guidance

The AIFC Insolvency Rules contain provisions which protect action taken by an Authorised Investment Exchange under its Default Rules from the normal operation of insolvency law which might otherwise leave this action open to challenge by a relevant office-holder.

3.5.2. Public notice of suspended or terminated Membership

The Authorised Investment Exchange must issue a public notice on its website in respect of any Member whose Membership is suspended or terminated in accordance with AMI 3.5.1.

3.5.3. Cooperation with office-holder

The Authorised Investment Exchange must cooperate, by the sharing of information and otherwise, with the AFSA, any relevant office-holder and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a Member of the Authorised Investment Exchange or the default of an Authorised Clearing House or another Authorised Investment Exchange.

3.6. Listing Rules

3.6.1. General requirements relating to Listing Rules

(1) An Authorised Investment Exchange wishing to admit Securities or Units in a Listed Fund to its own Official List must:

(a) have Listing Rules which comply with the requirements of AMI 3.6.2; and

(b) ensure that its Listing Rules are approved by the AFSA.

(2) Any amendment to an Authorised Investment Exchange's Listing Rules must, prior to the amendment becoming effective, have been:

(a) made available for a reasonable period of time to the market for consultation; and

(b) approved by the AFSA.

(3) In urgent cases, the AFSA may, on written application by the Authorised Investment Exchange, dispense with the requirement in (2)(a).

3.6.2. Contents of Listing Rules

The Listing Rules of an Authorised Investment Exchange must include requirements relating to:

(a) procedures for admission of Securities or Units in a Listed Fund to its Official List, including:

(i) requirements to be met before such Investments may be granted admission to an Official List; and

(ii) agreements in connection with admitting such Investments to an Official List;

(b) procedures for suspension and delisting of Securities or Units in a Listed Fund from an Official List;

(c) the imposition on any Person of obligations to observe specific standards of conduct or to perform, or refrain from performing, specified acts, reasonably imposed in connection with the admission of Securities or Units in a Listed Fund to an Official List or continued admission of such Investments to an Official List;

(d) penalties or sanctions which may be imposed by the Authorised Investment Exchange for a breach of the Listing Rules;

(e) procedures or conditions which may be imposed, or circumstances which are required to exist, in relation to matters which are provided for in the Listing Rules;

(f) actual or potential conflicts of interest that have arisen or might arise when a Person seeks to have Securities or Units in a Listed Fund admitted to an Official List; and

(g) such other matters as are necessary or desirable for the proper operation of the listing rule process and the market.

3.6.3. Publication of Listing Rules

(1) An Authorised Investment Exchange must publish, and make freely available, its Listing Rules.

(2) Where an Authorised Investment Exchange has made any amendments to its Listing Rules, it must have adequate procedures for notifying users of such amendments.

3.6.4. Compliance with Listing Rules

(1) An Authorised Investment Exchange which is permitted to maintain an Official List must ensure the function is properly and independently operated.

(2) An Authorised Investment Exchange must have procedures in place to ensure that:

(a) its Listing Rules are monitored and enforced; and

(b) complaints regarding Persons subject to the Listing Rules are investigated.

(3) An Authorised Investment Exchange must ensure that:

(a) where appropriate, disciplinary action can be carried out and financial and other types of penalties can be imposed on Persons subject to the Listing Rules; and

(b) adequate appeal procedures are in place.

3.6.5. Application for admission of Securities or Units in a Listed Fund to an Official List

(1) Applications for the admission of Securities or Units in a Listed Fund to an Official List must be made by the issuer of such Investments, or by a third party on behalf of and with the consent of the issuer of such Investments.

(2) An Authorised Investment Exchange must, before granting admission of any Securities or Units in a Listed Fund to an Official List maintained by it:

(a) be satisfied that the applicable requirements, including those in its Listing Rules, have been or will be fully complied with in respect of those Investments; and

(b) comply with the requirements relating to notification to the AFSA in (4) and (5).

(3) An Authorised Investment Exchange must notify an applicant in writing of its decision in relation to the application for admission of Securities or Units in a Listed Fund to its Official List.

(4) Subject to (5), at least 5 business days prior to an admission of Securities or Units in a Listed Fund to its Official List, an Authorised Investment Exchange must provide the AFSA with notice of the decision and include the following information in the notification:

(a) a copy of the listing application;

(b) a copy of the assessment of the listing application carried out by the Exchange; and

(c) any information requested by the AFSA.

(5) An Authorised Investment Exchange must immediately notify the AFSA of any decision to suspend, restore from suspension or de-list any Securities or Units in a Listed Fund from its Official List and the reasons for the decision.

3.6.6. Undertaking to comply with AFSA rules

An Authorised Investment Exchange may not admit Securities or Units in a Listed Fund to an Official List unless the issuer of such Investments:

(a) gives an enforceable undertaking to the AFSA to submit unconditionally to the jurisdiction of the AFSA in relation to any matters which arise out of or which relate to its use of the facilities of the Authorised Market Institution, including but not limited to requirements in MAR relating to Reporting Entities;

(b) agrees in writing to submit unconditionally to the jurisdiction of the AIFC Courts in relation to any disputes, or other proceedings in the AIFC, which arise out of or relate to its use of the facilities of the Authorised Market Institution;

(c) agrees in writing to subject itself to the AIFC laws in relation to its use of the facilities of the Authorised Market Institution; and

(d) appoints and maintains at all times, an agent for service of process in the AIFC and requires such agent to accept its appointment for service of process.

4. RULES APPLICABLE TO AUTHORISED CLEARING HOUSES

4.1. Admission of Securities or Units in a Listed Fund to Clearing

4.1.1. Admission to clearing rules

An Authorised Clearing House must have clear and objective criteria included in its rules according to which Investments can be cleared or settled on its facilities.

4.2. Risk management

4.2.1. Risk management framework

(1) An Authorised Clearing House must have a comprehensive risk management framework (i.e. detailed policies, procedures and systems) capable of managing legal, credit, liquidity, operational and other risks to which it is exposed.

(2) The risk management framework in (1) must:

(a) encompass a regular review of material risks to which the Clearing House is exposed and the risks posed to other market participants resulting from its operations; and

(b) be subject to periodic review by its board as appropriate to ensure that it is effective and operating as intended.

4.2.2. Safeguards for investors

An Authorised Clearing House must ensure that:

(a) access to its facilities is subject to criteria designed to protect the orderly functioning of those facilities and the interests of investors;

(b) its clearing services involve satisfactory arrangements for securing the timely discharge (whether by performance, compromise or otherwise) of the rights and liabilities of the parties to transactions in respect of which it provides such services (being rights and liabilities in relation to those transactions);

(c) satisfactory arrangements are made for recording transactions which are cleared or to be cleared by means of its facilities; and

(d) appropriate measures are adopted to reduce the extent to which the clearing house's facilities can be used for a purpose connected with market abuse or Financial Crime, and to facilitate their detection and monitor their incidence.

4.2.3. Loss allocation

An Authorised Clearing House must maintain effective arrangements (which may include rules) for ensuring that losses that:

(a) arise otherwise than as a result of a default of a Member of the Authorised Clearing House; and

(b) threaten the Authorised Clearing House’s solvency;

are allocated with a view to ensuring that the Authorised Clearing House can continue to provide its activities.

4.3. Credit and liquidity risk management

4.3.1. Credit Risk

(1) An Authorised Clearing House must establish a robust framework to manage its credit exposures to its participants and the credit risks arising from its payment, clearing and settlement processes.

(2) An Authorised Clearing House operating a payment system or Securities Settlement System must cover its current and, where they exist, potential future exposures to each participant fully with a high degree of confidence using collateral and other equivalent financial resources.

(3) An Authorised Clearing House operating as a Central Counterparty must:

(a) cover its current and potential future exposures to each participant fully with a high degree of confidence using margin and other prefunded financial resources;

(b) perform stress tests, on a regular basis as appropriate to the nature, scale and complexity of its operations, using models containing standards and predetermined parameters and assumptions; and

(c) at least monthly (and more frequently if the Securities or Units in a Listed Fund cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by its participants increase significantly), carry out a comprehensive and thorough analysis of stress testing models, scenarios, and underlying parameters and assumptions used to ensure that they are appropriate for determining the required level of default protection in light of current and evolving market conditions; and

(d) at least annually, conduct an independent review and validation of its financial risk management models.

4.3.2. Collateral

(1) An Authorised Clearing House which requires collateral to manage its own, its Members' or other participants' credit risks arising in the course of or for the purposes of its payment, clearing, and settlement processes must:

(a) only accept collateral with low credit, liquidity, and market risks; and

(b) set and enforce appropriately conservative haircuts and concentration limits.

(2) An Authorised Clearing House must, for the purposes of meeting the requirement in (1), establish and implement a collateral management system that is well designed and operationally flexible. Such a system must, at a minimum:

(a) limit the assets it accepts as collateral to those with low credit, liquidity, and market risks;

(b) establish prudent valuation practices and develop haircuts that are regularly tested and take into account stressed market conditions;

(c) to reduce the need for procyclical adjustments, establish, to the extent practicable and prudent, stable and conservative haircuts that are calibrated to include periods of stressed market conditions;

(d) avoid concentrated holdings of certain assets where that would significantly impair the ability to liquidate such assets quickly without significant adverse price effects; and

(e) mitigate, if it accepts cross-border collateral, the risks associated with such use. Such measures must ensure that the collateral can be used in a timely manner.

4.3.3. Margin

An Authorised Clearing House operating as a Central Counterparty must:

(a) have a margin system which establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves;

(b) use a reliable source of timely price data for its margin system;

(c) have procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable;

(d) adopt initial margin models and parameters that are risk-based and generate margin requirements sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default;

(e) mark participant positions to market and collect variation margin at least daily to limit the build-up of current exposures;

(f) ensure that it has the authority and operational capacity to make intraday margin calls and payments, both scheduled and unscheduled, to participants;

(g) analyse and monitor its model performance and overall margin coverage by conducting rigorous daily back testing and at least monthly, and more frequent where appropriate, sensitivity analysis; and

(h) regularly review and validate its margin system.

4.3.4. Liquidity Risk

(1) An Authorised Clearing House must:

(a) have a robust framework to manage its liquidity risks from its participants, settlement banks, nostro agents, custodian banks, liquidity providers, and other entities;

(b) have effective operational and analytical tools to identify, measure, and monitor its settlement and funding flows on an ongoing and timely basis, including its use of intraday liquidity;

(c) regularly test the sufficiency of its liquid resources through rigorous stress testing; and

(d) establish explicit rules and procedures that enable the Authorised Clearing House to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations on time following any individual or combined default among its participants.

(2) An Authorised Clearing House operating a payment system or Securities Settlement System must maintain sufficient liquid resources in all relevant currencies to effect same-day settlement, and where appropriate intraday or multiday settlement, of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate payment obligation in extreme but plausible market conditions.

(3) An Authorised Clearing House operating as a Central Counterparty must maintain sufficient liquid resources in all relevant currencies to settle securities-related payments, make required variation margin payments, and meet other payment obligations on time with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the two largest aggregate payment obligations to the Authorised Clearing House in extreme but plausible market conditions.

4.4. Settlement

4.4.1. Settlement finality

(1) An Authorised Clearing House must have rules and procedures which clearly define:

(a) the point at which settlement is final according to the relevant governing law; and

(b) the point after which unsettled payments, transfer instructions, or other obligations may not be cancelled by a participant.

(2) An Authorised Clearing House must complete final settlement no later than the end of the value date.

4.4.2. Money settlement

(1) Where practical, an Authorised Clearing House must conduct its money settlements in central bank money.

(2) Where a Clearing House conducts its money settlements using commercial bank money, it must:

(a) adopt appropriate measures to minimise and strictly control the credit and liquidity risk arising from such use;

(b) ensure that its legal agreements with any settlement banks, at a minimum:

(i) specify clearly when transfers on the books of individual settlement banks are expected to occur and when they are final; and

(ii) ensure that funds received are transferable as soon as possible, if not intra-day, at least before the end of the payments day to enable it and its Members and other participants on its facilities to manage their credit and liquidity risks.

4.4.3. Physical delivery

An Authorised Clearing House must:

(1) have rules and procedures which clearly state its obligations with respect to the delivery of physical instruments or commodities.

(2) identify, monitor, and manage the risks and costs associated with the storage and delivery of physical instruments or commodities.

4.5. Central securities depositories and exchange-of-value settlement systems

4.5.1. Central securities depositories

An Authorised Clearing House acting as a Central Securities Depository must:

(1) have appropriate rules, procedures, and controls, including robust accounting practices, to safeguard the rights of issuers and holders of Securities or Units in a Listed Fund, prevent the unauthorised creation or deletion of Securities or Units in a Listed Fund, and conduct periodic and at least daily reconciliation of issues of Securities or Units in a Listed Fund it maintains;

(2) prohibit overdrafts and debit balances in accounts of Securities or Units in a Listed Fund;

(3) maintain Securities or Units in a Listed Fund in an immobilised or dematerialised form for their transfer by book entry;

(4) protect assets against custody risk through appropriate rules and procedures consistent with its legal framework;

(5) ensure segregation between the Central Securities Depository's own assets and the securities of its participants and segregation among the securities of participants; and

(6) identify, measure, monitor, and manage its risks from other activities that it may perform.

4.5.2. Central security depository links

(1) A CSD must not establish any link with another CSD (CSD link) unless:

(a) it has:

(i) prior to establishing the CSD link, identified and assessed potential risks, for itself and its Members and other participants using its facilities, arising from establishing such a link;

(ii) adequate systems and controls to effectively monitor and manage, on an on-going basis, risks identified under (a) above; and

(iii) complied with the requirement in (2); and

(b) it is satisfied, on reasonable grounds, that the contractual arrangement establishing the CSD link:

(i) provides to the CSD and its Members and other participants using its facilities adequate protection relating to possible risks arising from using the other CSDs to which it is linked (linked CSDs);

(ii) in the case of a provisional transfer of securities between the CSD and linked CSDs, ensure intra-day finality by prohibiting the retransfer of securities before the first transfer of securities becomes final;

(iii) sets out the respective rights and obligations of the CSD and linked CSDs and their respective Members and other participants using their facilities; and

(iv) in the case of a linked CSD outside the AIFC, sets out clearly the applicable laws that govern each aspect of the CSD's and the linked CSD's operations.

(2) The CSD must be able to demonstrate to the AFSA, prior to the establishment of any CSD link, that:

(a) the link arrangement between the CSD and all linked CSDs, contains adequate mitigants against possible risks taken by the relevant CSDs, including credit, concentration and liquidity risks, as a result of the link arrangement;

(b) each linked CSD has robust daily reconciliation procedures to ensure that its records are accurate;

(c) if it or another linked CSD uses an intermediary to operate a link with another CSD, the CSD or the linked CSD has adequate systems and controls to measure, monitor, and manage the additional risks arising from the use of the intermediary;

(d) to the extent practicable and feasible, linked CSDs provide for Delivery Versus Payment (DVP) settlement of transactions between participants in linked CSDs, and where such settlement is not practicable or feasible, reasons for non-DVP settlement are notified to the AFSA before the link is approved ; and

(e) where interoperable securities settlement systems and CSDs use a common settlement infrastructure, there are:

(i) identical moments established for the entry of transfer orders into the system;

(ii) irrevocable transfer orders; and

(iii) finality of transfers of securities and cash.

4.5.3. Exchange-of-value settlement systems

An Authorised Clearing House operating an exchange-of-value settlement system must eliminate principal risk by ensuring that the final settlement of one obligation occurs if and only if the final settlement of the linked obligation also occurs, regardless of whether the Authorised Clearing House settles on a gross or net basis and when finality occurs.

4.6. Default management

4.6.1. Default rules in respect of Market Contracts

(1) An Authorised Clearing House must have Default Rules which, in the event of a Member of the Authorised Clearing House being or appearing to be unable to meet his obligations in respect of one or more Market Contracts, enable action to be taken to close out his position in relation to all unsettled Market Contracts to which he is a party.

(2) The rules may authorise the taking of the same or similar action where a Member appears to be likely to become unable to meet his obligations in respect of one or more Market Contracts.

(3) If an Authorised Clearing House has arrangements for transacting business with, or in relation to common Members of, another Authorised Market Institution, it must have Default Rules which enable action to be taken in respect of unsettled Market Contracts to which that Authorised Market Institution is a party in the event of the Authorised Market Institution being or appearing to be unable to meet its obligations in respect of one or more Market Contracts.

Guidance

The AIFC Insolvency Rules contain provisions which protect action taken by an Authorised Clearing House under its Default Rules from the normal operation of insolvency law which might otherwise leave this action open to challenge by a relevant office-holder.

4.6.2. Content of Default Rules

The Default Rules of an Authorised Clearing House must clearly define and specify:

(a) circumstances which constitute a default, addressing both financial and operational default, and how the different types of default may be treated by the Authorised Clearing House;

(b) the method for identifying a default (including any automatic or discretionary default scenarios, and how the discretion is exercised in any discretionary default scenarios);

(c) potential changes to the normal settlement practices in a default scenario;

(d) the management of transactions at different stages of processing;

(e) the expected treatment of proprietary and client transactions and accounts;

(f) the probable sequencing of actions that the Authorised Clearing House may take;

(g) the roles, obligations and responsibilities of various parties, including the Authorised Clearing House, the defaulting Member and non-defaulting participants;

(h) how to address the defaulting Member's obligations to clients;

(i) how to address the allocation of any credit losses it may face as a result of any individual or combined default among its participants with respect to their obligations to the Authorised Clearing House and how stress events are dealt with; and

(j) any other mechanisms that may be activated to contain the impact of a default, including:

(i) a default contribution fund, whereby defaulting and non-defaulting Members or participants' pre-funded contributions to the default contribution fund are applied to cover the losses or shortfall arising on a default on the basis of a predetermined order of priority; and

(ii) a resolution regime of the defaulting participant, involving "porting"; or

(iii) transferring the open positions and margin related to client transactions to a non-defaulting participant, receiver, third party or bridge financial company; and

(k) for all remaining rights and liabilities of the defaulter under or in respect of unsettled Market Contracts to be discharged and for there to be paid by or to the defaulter such sum of money (if any) as may be determined in accordance with the rules, by offsetting all relevant rights, assets and liabilities on the relevant account; and

(l) for the certification by or on behalf of the Authorised Clearing House of the sum finally payable or, as the case may be, of the fact that no sum is payable, separately for each account of the defaulter; and

(m) the Authorised Clearing House's segregation and portability arrangements, including the method for determining the value at which client positions will be transferred; and

(n) provisions ensuring that losses that arise as a result of the default of a Member of the Authorised Clearing House or threaten the Authorised Clearing House's solvency are allocated with a view to ensuring that the Authorised Clearing House can continue to provide the services and carry on the activities specified in its recognition order.

4.6.3. Notification to other parties affected

An Authorised Clearing House must have adequate arrangements for ensuring that parties to unsettled Market Contracts with a defaulter are notified as soon as reasonably practicable of the default and of any decision taken under the rules in relation to contracts to which they are a party.

4.6.4. Cooperation with other authorities

An Authorised Clearing House must cooperate, by the sharing of information and otherwise, with the AFSA and any other authority or body having responsibility for any matter arising out of or connected with the default of a Member of the Authorised Clearing House or the default of another Authorised Clearing House or an Authorised Investment Exchange.

4.6.5. Margin

(a) The rules of an Authorised Clearing House must provide that in the event of a default, margin provided by the defaulter for his own account is not to be applied to meet a shortfall on a client account other than a client account of the defaulter.

(b) This rule is without prejudice to the requirements of any rules relating to clients' money made by the AFSA.

(c) For the purposes of this rule, "client account of the defaulter" means an account held by the Authorised Clearing House in the name of the defaulter in which transactions effected by the defaulter have been recorded.

4.6.6. Segregation

(1) An Authorised Clearing House acting as a Central Counterparty must have systems and procedures to enable segregation and portability of positions of the customers of its Members and other participants on its facilities, and any collateral provided to it with respect to those positions.

(2) For the purposes of (1), an Authorised Clearing House's systems and controls must, at a minimum, provide for the following:

(a) the segregation and portability arrangements that effectively protect the positions and related collateral of the customers of the Members or other participants on its facilities from the default or insolvency of the relevant Member or other participants;

(b) if the Authorised Clearing House offers additional protection of the customer positions and related collateral against the concurrent default of both the relevant Member or other participants or other customers, the adoption of necessary measures to ensure that the additional protection offered is effective; and

(c) the use of account structures that enable the Authorised Clearing House to readily identify positions of the customers of the relevant Member or other participant, and to segregate their related collateral.

(3) An Authorised Clearing House acting as a Central Counterparty must make available to its Members and other participants using its facilities, its rules, policies and procedures relating to the segregation and portability of the positions and related collateral of the customers of its Members and other participants using its facilities.

5. SUPERVISION

5.1. Introduction

Guidance

The provisions of this chapter are additional to:

(a) the provisions of Chapter 6 of GEN (Supervision) to which an Authorised Market Institution is also subject as an Authorised Person; and

(b) the powers in respect of Authorised Market Institutions conferred upon the AFSA in the Framework Regulations.

5.2. Information and notifications

5.2.1. Information gathering on the AFSA's own initiative

(a) The AFSA or (as the case may be) its officers may, by notice in writing, require an Authorised Market Institution or any Person who is connected to the Authorised Market Institution to provide or produce specified information or information of a specified description, at a specified place and before the end of a reasonable period, in such form and with such verifications or authentications as it may reasonably require.

(b) A Person is connected with an Authorised Market Institution if he is or has at any relevant time been:

i. a member of the Authorised Market Institution's group;

ii. a Controller of the Authorised Market Institution;

iii. a member of the Governing Body of the Authorised Market Institution; or

iv. any other member of a partnership of which the Authorised Market Institution is a member.

5.2.2. Ongoing notification obligations

An Authorised Market Institution must deal with AFSA in an open and co-operative manner and keep the AFSA promptly informed of significant events or activities, wherever they are carried on, relating to the Authorised Market Institution, of which the AFSA would reasonably expect to be notified, including but not limited to, any matters that might impair the Authorised Market Institution's ability to discharge its regulatory functions.

5.2.3. Notification of significant breaches by the Authorised Market Institution or its Employees

An Authorised Market Institution must advise the AFSA immediately if it becomes aware, or has reasonable grounds to believe, that a significant breach by the Authorised Market Institution or any of its Employees of a Rule or any other requirement imposed by the AFSA may have occurred or may be about to occur.

5.2.4. Notification of significant breaches of the Business Rules

An Authorised Market Institution must advise the AFSA immediately if it becomes aware, or has reasonable grounds to believe, that a significant breach by any Person of its Business Rules may have occurred or may be about to occur.

5.2.5. Notification of changes in constitution and governance

An Authorised Market Institution must give notice to the AFSA in the following circumstances, setting out written particulars of the matters concerned and any relevant dates:

(a) Where an Authorised Market Institution is to circulate any notice or other document proposing any amendment to its memorandum or articles of association or other document relating to its constitution, to:

i. its shareholders or any group or class of them;

ii. Persons granted access to its facilities or any group or class of them; or

iii. any other group or class of Persons which has the power to make that amendment or whole consent or approval is required before it may be made.

(b) Where an Authorised Market Institution makes an amendment to its memorandum or articles of association, or other document relating to its constitution.

(c) Where any significant change is made to an agreement which relates to the constitution or to the corporate governance framework or the remuneration structure or strategy of the Authorised Market Institution.

5.2.6. Notification of complaints

Where an Authorised Market Institution has investigated a complaint arising in connection with the performance of, or failure to perform, any of its regulatory functions, and the conclusion is that the Authorised Market Institution should:

(a) make a compensatory payment to any Person; or

(b) remedy the matter which was the subject of that complaint,

the Authorised Market Institution must immediately notify the AFSA of that event and give the AFSA a copy of the report and particulars of the recommendation as soon as that report or those recommendations are available to it.

5.2.7. Notification of admission to or removal from trading

Where an Authorised Investment Exchange proposes to suspend or remove from trading or admit to trading, by means of its facilities, a class of Security or Unit in a Listed Fund which it has not previously traded, but is licensed to do so, it must give the AFSA notice of that event, at the same time as the proposal is communicated to Persons granted access to its facilities or shareholders, with the following information:

(a) a description of the Investment to which the proposal relates; and

(b) the name of any clearing or settlement facility in respect of that Investment.

5.2.8. Notification of removal from or admission to clearing

Where an Authorised Clearing House proposes to cease clearing or settling, or to commence clearing or settling, by means of its facilities, a class of Security or Unit in a Listed Fund which it has not previously cleared or settled, but is licensed to do so, it must give the AFSA notice of that event, at the same time as the proposal is communicated to Persons granted access to its facilities or shareholders, with the following information:

(a) a description of the Investment to which the proposal relates; and

(b) the name of any trading facility in respect of that Investment.

5.3. Financial and other information

5.3.1. Annual reports and accounts

An Authorised Market Institution must give the AFSA:

(a) a copy of its annual report and accounts; and

(b) a copy of any consolidated annual report and accounts of any group of which the Authorised Market Institution is a member;

no later than when the first of the following events occurs:

(c) three months after the end of the financial year to which the document relates;

(d) the time when the documents are sent to Persons granted access to the facilities or shareholders of the Authorised Market Institution; or

(e) the time when the document is sent to a holding company of the Authorised Market Institution.

5.3.2. Audit committee reports

Where an audit committee of an Authorised Market Institution has received a report in relation to any period or any matter relating to any regulatory functions of that Authorised Market Institution, the Authorised Market Institution must immediately give the AFSA a copy of that report.

5.3.3. Quarterly management accounts

An Authorised Market Institution must give the AFSA a copy of its quarterly management accounts within one month of the end of the period to which they relate.

5.3.4. Forward-looking estimates

An Authorised Market Institution must give the AFSA:

(a) a statement of its anticipated income, expenditure and cash flow for each financial year; and

(b) an estimated balance sheet showing its position as it is anticipated at the end of each financial year;

at least 15 days before the beginning of that financial year.

5.3.5. Fees and charges

An Authorised Market Institution must give the AFSA a summary of:

(a) any proposal for changes to the fees or charges levied on users of its facilities, or any group or class of them, at the same time as the proposal is communicated to the relevant users; and

(b) any such change, no later than the date when it is published and notified to relevant parties.

6. RULES APPLICABLE TO AN AUTHORISED PRIVATE E-CURRENCY TRADING FACILITY

6.1. Main requirements relating to trading on the facility

(1) An Authorised Private E-currency Trading Facility must, at the time a Licence is granted and at all times thereafter, have:

(a) transparent and non-discriminatory rules and procedures to ensure fair and orderly trading of Private E-currencies on its facility;

(b) objective criteria governing access to its facility;

(c) objective and transparent criteria for determining the Investments that can be traded on its facility; and

(d) adequate technology resources.

(2) An Authorised Private E-currency Trading Facility must maintain effective arrangements to verify that its members comply with requirements set out in COB, AML.

(3) An Authorised Private E-currency Trading Facility must not introduce a liquidity incentive scheme other scheme for encouraging bids on a trading venue or to increase the volume of business transacted unless it has obtained the prior approval of the AFSA.

(4) For the purposes of (1), an Authorised Private E-currency Trading Facility must make available to the public, without any charges, data relating to the quality of execution of transactions on the Authorised Private E-currency Trading Facility on at least an annual basis. Reports must include details about price, costs, speed and likelihood of execution for individual Private E-currencies.

6.2. Requirement to prepare Rules

(1) An Authorised Private E-currency Trading Facility's Rules must:

(a) be based on objective criteria;

(b) be non-discriminatory;

(c) be clear and fair;

(d) be made publicly available free of charge;

(e) contain provisions for the resolution of Members' and other participants' disputes;

(f) contain provisions for penalties or sanctions which may be imposed by the Authorised Private E-currency Trading Facility for a breach of the Rules; and

(g) contain provisions for an appeal process from the decisions of the Authorised Private E-currency Trading Facility.

(2) An Authorised Private E-currency Trading Facility must seek prior approval of its Rules (Business Rules, Admission to Trading Rules, Membership Rules) and of amendments to its Rules by:

(a) making its Rules available for market consultation for no less than 30 days; and

(b) obtaining approval of the AFSA.

(3) Where an Authorised Private E-currency Trading Facility has made any amendments to its Rules, it must have adequate procedures for notifying users and the AFSA of such amendments with a notice period of at least 30 days prior to making any amendments to its Rules available for market consultation.

(4) An Authorised Private E-currency Trading Facility must have procedures in place to ensure that its Rules are monitored and enforced.

6.3. Admission of Private E-currencies to trading

6.3.1. Admission to Trading Rules

(1) An Authorised Private E-currency Trading Facility must make clear and transparent rules concerning the admission of Private E-currencies to trading on its facilities.

(2) The rules of the Authorised Private E-currency Trading Facility must ensure that:

(a) Private E-currencies admitted to trading on an Authorised Private E-currency Trading Facility's facilities are capable of being traded in a fair, orderly and efficient manner; and

(b) Private E-currencies admitted to trading on an Authorised Private E-currency Trading Facility's facilities are freely negotiable.

6.3.2. Application for admission of Private E-currencies to Trading

(1) Applications for the admission of a Private E-currency to trading can be made to an Authorised Private E-currency Trading Facility by the issuer of the Private E-currency, by a third party on behalf of and with the consent of the issuer of the Private E-currency, or by a Member of an Authorised Private E-currency Trading Facility.

(2) A Private E-currency can also be admitted to trading on the Authorised Private E-currency Trading Facility's own initiative.

(3) An Authorised Private E-currency Trading Facility must, before admitting any Private E-currency to trading:

(a) be satisfied that the applicable requirements, including those in its Admission to Trading Rules, have been or will be fully complied with in respect of such Private E-currency; and

(b) obtain approval of the AFSA in respect of such Private E-currency.

(4) For the purposes of (1), an Authorised Private E-currency Trading Facility must notify an applicant in writing of its decision in relation to the application for admission of the Private E-currency to trading. In the case that such decision is to deny the application, the written notice should indicate (i) whether the application has been considered by the AFSA, and if so, (ii) the AFSA's determination in respect thereof.

(5) For purposes of 3(b), an application to AFSA by Authorised Private E-currency Trading Facility shall include:

(a) a copy of the admission application; and

(b) any other information requested by the AFSA.

6.3.3. Decision-making procedures for the AFSA in relation to applications for approval of the admission of Private E-currencies to trading

(1) Where an Authorised Person Operating a Private E-currency Trading Facility applies for approval of the admission of a Private E-currency to trading, the AFSA may:

(a) approve the application;

(b) deny the application; or

(c) approve the application subject to conditions or restrictions.

(2) The AFSA may exercise its powers under (1)(b) where the AFSA reasonably considers that:

(a) granting the Private E-currencies admission to trading of Private E-currencies would be detrimental to the interests of Persons dealing in the relevant Private E-currencies using the facilities of an Authorised Person Operating a Private E-currency Trading Facility or otherwise; or

(b) any requirements imposed by the AFSA or in the Rules of an Authorised Private E-currency Trading Facility as are applicable have not been or will not be complied with; or

(c) the Issuer of the Private E-currencies has failed or will fail to comply with any obligations applying to it including those relating to having its Private E-currencies admitted to trading or traded in another jurisdiction.

(3) Where the AFSA denies an application for approval of admission of a Private E-currency to trading pursuant to (2), such Private E-Currencies must not be admitted by an Authorised Person Operating a Private E-currency Trading Facility to its facility.

(4) Where the AFSA approves an application for approval of admission of a Private E-currency to trading subject to conditions or restrictions, the Authorised Person Operating a Private E-currency Trading Facility is responsible for implanting such conditions and restrictions in admitting the Private E-currency to trading, and such conditions or restrictions may not be varied or removed without the approval of the AFSA.

6.3.4. Undertaking to comply with the acting law of the AIFC

An Authorised Private E-currency Trading Facility may not admit Private E-currencies to trading unless the person who seeks to have Private E-currencies admitted to trading:

(a) gives an enforceable undertaking to the AFSA to submit unconditionally to the jurisdiction of the AIFC in relation to any matters which arise out of or which relate to its use of the facilities of the Authorised Market Institution;

(b) agrees in writing to submit unconditionally to the jurisdiction of the AIFC Courts in relation to any disputes, or other proceedings in the AIFC, which arise out of or relate to its use of the facilities of the Authorised Market Institution; and

(c) agrees in writing to subject itself to the acting law of the AIFC in relation to its use of the facilities of the Authorised Market Institution.

6.3.5. Review of compliance

The Authorised Private E-currency Trading Facility must maintain arrangements regularly to review whether the Private E-currencies admitted to trading on its facilities comply with the Admission to Trading Rules.

6.4. Suspending or removing Private E-currencies from trading

6.4.1. Power to suspend

(1) The rules of an Authorised Private E-currency Trading Facility must provide that the Authorised Private E-currency Trading Facility have the power to suspend or remove from trading on its facilities any Private E-currencies with immediate effect or from such date and time as may be specified where it is satisfied that there are circumstances that warrant such action or it is in the interests of the AIFC.

(2) The AFSA may direct an Authorised Person Operating a Private E-currency Trading Facility to suspend or remove Private E-currencies from trading with immediate effect or from such date and time as may be specified if it is satisfied there are circumstances that warrant such action or it is in the interests of the AIFC.

(3) The AFSA may withdraw a direction made under (2) at any time.

(4) Private E-currencies that are suspended from trading of Private E-currencies remain admitted to trading for the purposes of this Chapter.

(5) The AFSA may prescribe any additional requirements or procedures relating to the removal or suspension of Private E-currencies from or restoration of Private E-currencies to trading.

6.4.2. Limitation on power to suspend or remove Private E-currencies from trading

The rules of an Authorised Private E-currency Trading Facility must contain provisions for orderly suspension and removal from trading on its facilities any Private E-currency which no longer complies with its rules taking into account the interests of investors and the orderly functioning of the financial markets of the AIFC.

6.4.3. Publication of decision

(1) Where the Authorised Private E-currency Trading Facility suspends or removes any Private E-currency from trading on its facilities, it must notify the AFSA in advance and make that decision public by issuing a public notice on its website.

(2) Where the Authorised Private E-currency Trading Facility lifts a suspension or re-admits any Private E-currency to trading on its facilities, it must notify the AFSA in advance and make that decision public by issuing a public notice on its website.

(3) Where an Authorised Private E-currency Trading Facility has made any decisions on admission, suspension, or removal of Private E-currencies from trading on its facilities, it must have adequate procedures for notifying users of such decisions.

6.5. Transparency obligations

6.5.1. Trading transparency obligation

An Authorised Private E-currency Trading Facility must make available to the public:

(a) the current bid and offer prices of Private E-currencies traded on its systems on a continuous basis during normal trading hours;

(b) the price, volume and time of the transactions executed in respect of Private E-currencies traded on its facilities in as close to real-time as technically possible; and

(c) provide price, volume, time and counterparty details to the AFSA within 24 hours of the close of each trading day via a secure electronic feed.

6.5.2. Public notice of suspended or terminated Membership

The Authorised Private E-currency Trading Facility must promptly issue a public notice on its website in respect of any Member that has a Licence to carry on Market Activities or Regulated Activities whose Membership is suspended or terminated.

6.5.3. Cooperation with office-holder

The Authorised Private E-currency Trading Facility must cooperate, by the sharing of information and otherwise, with the AFSA, any relevant office-holder and any other authority or body having responsibility for any matter arising out of, or connected with, the default of a Member of the Private E-currency Trading Facility.

6.6. Additional requirements on technology resources

6.6.1. Cyber-security policy

(1) An Authorised Private E-currency Trading Facility shall implement a written cyber security policy setting forth its policies and procedures for the protection of its electronic systems and members and counterparty data stored on those systems, which shall be reviewed and approved by the Authorised Private E-currency Trading Facility's governing body at least annually.

(2) The cyber security policy must, as a minimum, address the following areas:

(a) information security;

(b) data governance and classification;

(c) access controls;

(d) business continuity and disaster recovery planning and resources;

(e) capacity and performance planning;

(f) systems operations and availability concerns;

(g) systems and network security;

(h) systems and application development and quality assurance;

(i) physical security and environmental controls;

(j) customer data privacy;

(k) vendor and third-party service provider management; and

(l) incident response.

(3) An Authorised Private E-currency Trading Facility must advise the AFSA immediately if it becomes aware, or has reasonable grounds to believe, that a significant breach by any Person of its cyber security policy may have occurred or may be about to occur.

6.6.2. Technology governance

An Authorised Private E-currency Trading Facility must, as a minimum, have in place systems and controls with respect to the procedures describing the creation, management and control of digital wallets and private keys.

6.6.3. Trading controls

An Authorised Private E-currency Trading Facility must be able to:

(a) reject orders that exceed its pre-determined volume and price thresholds, or that are clearly erroneous;

(b) temporarily halt or constrain trading on its facilities if necessary or desirable to maintain an orderly market; and

(c) cancel, vary, or correct any order resulting from an erroneous order entry and/or the malfunctioning of the system of a Member.

6.6.4. Settlement and Clearing facilitation services

(1) An Authorised Private E-currency Trading Facility must ensure that satisfactory arrangements are made for securing the timely discharge (whether by performance, compromise or otherwise), clearing and settlement of the rights and liabilities of the parties to transactions effected on the Authorised Private E-currency Trading Facility (being rights and liabilities in relation to those transactions).

(2) An Authorised Private E-currency Trading Facility acting as a Private E-currency Depository must:

(a) have appropriate rules, procedures, and controls, including robust accounting practices, to safeguard the rights of Private E-currencies issuers and holders, prevent the unauthorised creation or deletion of Private E-currencies, and conduct periodic and at least daily reconciliation of each Private E-currency balance it maintains for issuers and holders;

(b) prohibit overdrafts and debit balances in Private E-currencies accounts;

(c) maintain Private E-currencies in an immobilised or dematerialised form for their transfer by book entry;

(d) protect assets against custody risk through appropriate rules and procedures consistent with its legal framework;

(e) ensure segregation between the Private E-currency Depository's own assets and the Private E-currencies of its participants and segregation among the Private E-currencies of participants; and

(f) identify, measure, monitor, and manage its risks from other custody related activities that it may perform.

7. RULES APPLICABLE TO AN AUTHORISED CROWDFUNDING PLATFORM

7.1. Application

7.1.1 The terminology used in this Chapter 7 varies according to the type of_Authorised Crowdfunding Platform:

(a) "Borrower", “Debenture”, "lender", "loan" and "Permitted Loan" for Loan Crowdfunding Platform; and

(b) "Issuer", "Investor", "Investment" and "Permitted Investment" for Investment Crowdfunding Platform.

7.1.2 AMI 7.2 and 7.3 apply to all Authorised Crowdfunding Platforms (unless specified otherwise).

7.2. Permissible activities

7.2.1 An Authorised Crowdfunding Platform may apply to the AFSA to carry on one or more of the following Regulated and Market Activities:

(a) Dealing in Investments as Agent;

(b) Arranging Custody;

(c) Arranging Deals in Investments;

(d) Operating a Representative Office;

(e) Providing Credit;

(f) Arranging a Credit Facility;

(g) Providing Money Services; and

(h) Operating a Private E-currency Trading Facility.

7.2.2 Permitted Investments and Permitted Loans

(1) An Investment Crowdfunding Platform may facilitate a Person investing in the following kinds of Investments ("**Permitted Investments**") through the Investment Crowdfunding Platform:

(a) Shares; and

(b) Units.

(2) A Loan Crowdfunding Platform may facilitate a Person investing in the following kinds of loans ("**Permitted Loans**") through the Loan Crowdfunding Platform:

(a) loans;

(b) Debentures; and

(c) other financial accommodation.

7.2.3 An Investment Crowdfunding Platform must not facilitate a Person investing in the following kinds of Investments through the Investment Crowdfunding Platform:

(a) Warrants;

(b) Certificates;

(c) Structured Products;

(d) Derivatives;

(e) Private E-currencies; or

(f) rights or interests in a Security, Structured Product, Derivative or a Private E-currency.

7.3. Requirements for Authorised Crowdfunding Platforms

7.3.1 Clients of an Authorised Crowdfunding Platform

(1) Both Borrowers and lenders (in the case of a Loan Crowdfunding Platform) and Issuers and Investors (in the case of an Investment Crowdfunding Platform) will be Clients of an Authorised Crowdfunding Platform.

(2) An Authorised Crowdfunding Platform must classify Clients as being in one of the following categories:

(a) a Retail Lender or Retail Investor; or

(b) an Accredited Lender or Accredited Investor.

(3) An Authorised Crowdfunding Platform must notify a new Client of its classification in accordance with AMI 7.3.1 in respect of the services provided by it to that Client.

(4) An Authorised Crowdfunding Platform must classify as a Retail Lender or Retail Investor any Client that is not an Accredited Lender or Accredited Investor.

(5) For the purposes of AMI 7, "Accredited Lender or Accredited Investor" means:

(a) in respect of a Loan Crowdfunding Platform, any natural person who lends or intends to lend for a total consideration of at least USD100,000 (or an equivalent amount in another currency) per Borrower across one or more Permitted Loans in any 12-month period; or

(b) in respect of an Investment Crowdfunding Platform, any natural person who acquires or intends to acquire Permitted Investments for a total consideration of at least USD 100,000 (or an equivalent amount in another currency) per Issuer across one or more offers in any 12-month period; or

(c) an Authorised Person; or

(d) a Body Corporate.

7.3.2 Crowdfunding risk disclosure

(1) An Authorised Crowdfunding Platform must disclose prominently on its website the main risks to lenders or Investors using a Crowdfunding Platform, including (as applicable) that:

(a) Borrowers or Issuers using the Authorised Crowdfunding Platform may include new businesses and, as many new businesses fail, a loan to such a Borrower or an Investment with such an Issuer may involve high risks, including the loss of all or part of the lender or Investor's money, or delays in payment or the realization of gains;

(b) Borrowers or Issuers on the Crowdfunding Platform may apply funds borrowed to higher risk activities or investments (for example, to a prospective investments in a property development) and, consequently, a loan to such a Borrower or a Permitted Investment with such an Issuer may involve high risks;

(c) failure to diversify a portfolio of Permitted Loans or Permitted Investments may lead to greater losses in the event of the default of a relevant Borrower or Issuer;

(d) the lender may not be able to transfer their Permitted Loans or the Investor may not be able to sell their Permitted Investment when they wish to, or at all; and

(e) if for any reason the Authorised Crowdfunding Platform ceases to carry on its business, the lender or Investor may lose their money, incur costs or experience delays in being paid.

(2) The disclosure referred to in (1) must be presented in a way that is fair, clear and not misleading.

7.3.3 Information about default or failure rates

(1) An Authorised Crowdfunding Platform must disclose prominently on its website (as applicable):

(a) for a Loan Crowdfunding Platform, the actual and expected default rates for Permitted Loans entered into on the Authorised Crowdfunding Platform; and

(b) for an Investment Crowdfunding Platform, the actual and expected failure rate of Permitted Investments who use the Authorised Crowdfunding Platform.

(2) The information referred to in (1) must:

(a) for actual default or failure rates, cover the period since the Authorised Crowdfunding Platform began providing the service;

(b) for expected default or failure rates, set out a summary of the assumptions used in determining those expected rates; and

(c) be presented in a way that is fair, clear and not misleading.

(3) Where an Authorised Crowdfunding Platform is within its first 12 months of operation, it does not need to disclose actual default or failure rates if no such data is yet available. Where no such data is available during this period, an Authorised Crowdfunding Platform shall disclose that no historic data is available and all default or failure rates disclosed are expected default or failure rates only.

7.3.4 Information about the service and lender or Investor education tools

(1) An Authorised Crowdfunding Platform must disclose prominently on its website in a way that is fair, clear and not misleading key information about how its service operates (as applicable), including:

(a) details of how the Authorised Crowdfunding Platform functions;

(b) details of how and by whom an Authorised Crowdfunding Platform is remunerated for the service it provides, including fees and charges it imposes;

(c) any financial interest of an Authorised Crowdfunding Platform or a Related Person that may create a conflict of interest;

(d) the eligibility criteria for Borrowers or Issuers that use the service;

(e) the minimum and maximum amounts, if any, of Permitted Loans or Permitted Investments that may be sought by a Borrower or an Issuer using the service;

(f) what, if any, security or collateral is usually sought from Borrowers or Issuers, when might rights to enforce such security or apply such collateral be exercised and any limitations in connection therewith;

(g) the eligibility criteria for lenders or Investors that use the service;

(h) any limits on the amounts a lender may lend or an Investor may invest using the service, including limits for individual Permitted Loans or Permitted Investments and limits that apply over any 12-month period;

(i) when a lender or Investor may withdraw a commitment to provide funding, and the procedure for exercising such a right;

(j) what will happen if Permitted Loans sought by a Borrower or funds sought by an Issuer either fail to meet, or exceed, the target level;

(k) steps an Authorised Crowdfunding Platform will take if there is a material change in a Borrower's or Issuer's circumstances and the rights of the lender and Borrower or Issuer and Investor in that situation;

(l) how an Authorised Crowdfunding Platform will deal with overdue payments or a default by a Borrower;

(m) which jurisdiction's laws will govern the loan agreement between the lender and Borrower or the Investment between Investor and Issuer;

(n) arrangements and safeguards for Client Assets held or controlled by an Authorised Crowdfunding Platform, including details of any legal arrangements (such as nominee companies) that may be used to hold Client Assets;

(o) any facility an Authorised Crowdfunding Platform provides to facilitate the transfer of Permitted Loans or sale of Permitted Investments, the conditions for using the facility and any risks relating to the use of that facility;

(p) measures the Authorised Crowdfunding Platform has in place to ensure the Crowdfunding Platform is not used for money-laundering or other unlawful activities;

(q) measures the Authorised Crowdfunding Platform has in place for the security of information technology systems and data protection; and

(r) contingency arrangements the Authorised Crowdfunding Platform has in place to ensure the orderly administration of Permitted Loans if it ceases to carry on business.

(2) For the purposes of (1), "significant influence" refers to the ability to participate in, direct, or otherwise control the operating decisions of an entity. The existence of significant influence may be evidence in one or more of the following ways:

(a) representation on the board of directors or equivalent governing body of the entity;

(b) participation in the policy or decision making process of the entity;

(c) material transactions between the entity and the person with influence;

(d) changes to managerial personnel directed by the person with influence; or

(e) the provision of otherwise sensitive information to the person with influence.

(3) An Authorised Crowdfunding Platform must make available on its website one or more interactive educational tools which are reasonably designed to promote lender understanding of the services offered by the Authorised Crowdfunding Platform, as further described in (1), and of the key risks of using these services, as further described in 7.3.2.

7.3.5 Risk acknowledgement form

(1) An Authorised Crowdfunding Platform must ensure that a Retail Lender or Retail Investor provides a signed risk acknowledgement form for each Permitted Loan or Permitted Investment (as applicable) that it makes using the platform.

(2) The risk acknowledgement form under (1) must:

(a) set out clearly the risks referred to in AMI 7.3.2, 7.3.4;

(b) require the Retail Lender or Retail Investor to confirm that they understand those risks; and

(c) be provided before, or at the same time as, the Retail Lender or Retail Investor commits to making the Permitted Loan or Permitted Investment (as applicable).

7.3.6 Due diligence on Borrowers or Issuers

(1) An Authorised Crowdfunding Platform must not permit a Borrower or Issuer to use its service unless the Borrower or Issuer is a Body Corporate.

(2) An Authorised Crowdfunding Platform must conduct due diligence on each Borrower or Issuer before allowing it to use its service.

(3) The due diligence under (2) must include, as a minimum, taking reasonable steps to verify in relation to the Borrower or Issuer (as applicable):

(a) its identity, including details of its incorporation and business registration; and

(b) the identity and place of domicile of each of its Directors, officers and Controllers.

(4) The AFSA may by written notice, require an Authorised Crowdfunding Platform to conduct additional due diligence on Borrowers and/or Issuers before such Borrowers and/or Issuers are permitted to use the service provided by the Authorised Crowdfunding Platform.

7.3.7 Disclosure of information about the Borrower or Issuer

(1) An Authorised Crowdfunding Platform must disclose prominently on its website relevant information about each Borrower or Issuer, including as a minimum:

(a) the name of the Borrower or Issuer, the full name and position of each of its Directors and officers and the full name of each Controller;

(b) the place of incorporation of the Borrower or Issuer and the place of domicile of each Director, officer and Controller;

(c) a description of the Borrower or Issuer's business;

(d) a detailed description of the proposal for which it is seeking funding including:

(i) the target level of funding sought and what will happen if that level is not met or is exceeded; and

(ii) how the funds will be used.

(e) the results of any due diligence carried out by the Authorised Crowdfunding Platform on the Borrower or Issuer and any limits on the due diligence that could be carried out;

(f) the grading or rating by the Authorised Crowdfunding Platform of the Borrower or Issuer's creditworthiness (if any), including:

(i) how the grading or rating has been assessed;

(ii) an explanation of what the different grading or rating levels mean; and

(iii) a clear statement that this should not be taken as advice about whether money should be lent to the Borrower or an Investment should be made with the Issuer;

(g) that the Borrower or Issuer, and information provided about the Borrower or Issuer, are not checked or approved by the AFSA; and

(h) other disclosure documents that contain the necessary information which is material to Retail Investors or Retail Lenders for making an informed investment decision.

(2) The disclosures referred to in (1) must be presented in a way that is fair, clear and not misleading.

7.3.8 Disclosure of information about the Permitted Loan or Permitted Investment

(1) An Authorised Crowdfunding Platform must disclose prominently on its website relevant information about each Permitted Loan or Permitted Investment offered by a Borrower (as applicable), including as a minimum:

(a) for a Permitted Loan, the duration of the Permitted Loan, details of interest payable and any other rights attaching to the Permitted Loan;

(b) for an issue of Permitted Investments, any rights attaching to the Permitted Investments, such as a dividend, voting or pre-emption rights;

(c) whether any security is being provided and, if so, the details of that security including the circumstances in which it might be exercised and any limitations on its use;

(d) for a Permitted Loan, if applicable, any other reward or benefit attaching to the Permitted Loan and the terms on which it is available; and

(e) for an issue of Permitted Investments, whether Investors have any protection from their interest or holding being diluted by the issue of further Permitted Investments.

(2) The disclosures referred to in (1) must be presented in a way that is fair, clear and not misleading.

7.3.9 Proposals not to be advertised outside platform

(1) An Authorised Crowdfunding Platform must:

(a) not advertise a specific lending or Investment proposal that is available on the Authorised Crowdfunding Platform; and

(b) take reasonable steps to ensure that Borrowers or Issuers that use the Authorised Crowdfunding Platform do not advertise the lending or Investment proposal,

unless the advertisement is made on the platform and is accessible only to existing Clients who use the Authorised Crowdfunding Platform.

7.3.10 Material changes affecting a Borrower or Issuer

(1) This Rule applies if, in the reasonable opinion of an Authorised Crowdfunding Platform, a material change occurs relating to a Borrower or Issuer, its business, its proposal or the carrying out of its proposal.

(2) In this Rule, a "material change" means any change or new matter that may significantly affect the Borrower or Issuer's ability to meet its payment obligations under the loan agreement or its ability to carry out its proposal.

(3) If the material change occurs during the Commitment Period, an Authorised Crowdfunding Platform must:

(a) notify committed lenders or Investors of the material change and require them to reconfirm their commitment within 5 business days; and

(b) if reconfirmation is not provided within the period specified in (a), cancel the commitment.

(4) If the material change occurs after the Commitment Period, an Authorised Crowdfunding Platform must disclose prominently on its website:

(a) details of the material change;

(b) any change in the rights of the lenders and the Borrower, or the Investors and Issuer, arising from the material change; and

(c) what steps, if any, the operator is proposing to take as a result of the change.

(5) A disclosure or notification under (3) or (4) must be made as soon as practicable after the Authorised Crowdfunding Platform becomes aware of the material change.

7.3.11 Borrower or Issuer use of other platforms

(1) An Authorised Crowdfunding Platform must:

(a) take reasonable steps to identify where a Borrower or Issuer is seeking, or proposes to seek, funding on another Authorised Crowdfunding Platform during the Commitment Period; and

(b) where it identifies that a Borrower or Issuer is seeking, or proposes to seek, funding on another Authorised Crowdfunding Platform during the Commitment Period, disclose this fact to lenders or Investors.

7.3.12 Equal treatment of lenders or Investors

(1) An Authorised Crowdfunding Platform must ensure that lenders or Investors who use its service are able to have access to the same information on its website about a Borrower or a lending proposal or an Issuer or an Investment proposal, and that access to the information is provided at the same time.

(2) If an Authorised Crowdfunding Platform provides an auto-lending or auto-investment system, or any other facility that provides some lenders or Investors with the opportunity to lend money ahead of other lenders or Investors, it must disclose prominently on its website that some lenders or Investors may have preferential access to alternative proposals or terms.

7.3.13 No suitability disclosure

(1) If an Authorised Crowdfunding Platform provides an auto-lending or auto-investment system it must disclose prominently to lenders or Investors who use the facility that no assessment is made that any Permitted Loan or Permitted Investment selected by the system is suitable for the lender or Investor.

7.3.14 An Authorised Crowdfunding Platform not to permit staff to use the platform

(1) An Authorised Crowdfunding Platform must take reasonable steps to ensure that its officers, employees, their Family Members and any Related Persons do not:

(a) lend money or provide finance to a Borrower or Issuer;

(b) borrow money from a lender or receive funding from an Investor; or

(c) hold any direct or indirect interest in the capital or voting rights of a Borrower or lender or an Issuer or Investor.

7.3.15 Forums

(1) If an Authorised Crowdfunding Platform provides a means of communication (a "forum") for Borrowers and lenders or Issuers and Investors to discuss funding proposals made using the service, it must:

(a) refer lenders or Investors to the forum as a place where they can find, or take part in, further discussion about proposals, while clearly stating that the Authorised Crowdfunding Platform does not conduct due diligence on information on the forum;

(b) restrict posting of comments on the forum to Persons who are Clients using the service;

(c) ensure that all Clients using the forum have equal access to information posted on the forum;

(d) require a Person posting a comment on the forum to disclose clearly if he is affiliated in any way with a Borrower or Issuer or is being compensated, directly or indirectly, to promote a proposal by a Borrower or Issuer;

(e) take reasonable steps to monitor and prevent posts on the forum that are potentially misleading or fraudulent;

(f) immediately take steps to remove a post, or to require a post to be deleted or amended, if an Authorised Crowdfunding Platform becomes aware that (d) or (e) have not been complied with; and

(g) not participate in discussions on the forum except to moderate posts or to take steps referred to in (f).

7.3.16 Facility for transfer of Permitted Loans or Permitted Investments

(1) If an Authorised Crowdfunding Platform provides a facility that assists the transfer of rights or obligations under a Permitted Loan or the sale of Permitted Investments, it must ensure that (as applicable):

(a) the facility relates only to Permitted Loans or Permitted Investments originally facilitated using its service;

(b) transfers can take place only between lenders or Investors who are already Clients using the service and have initially lent money under a Permitted Loan or initially subscribed for Permitted Investments using the service;

(c) in the case of a Permitted Loan, the facility allows only a lender (and not the Borrower) to transfer rights and obligations under the agreement;

(d) in the case of a Permitted Loan, a lender must transfer the rights and obligations relating to the whole of a Permitted Loan made (and not just a part of the Permitted Loan);

(e) potential transferees or buyers have access to all information on the website about the Borrower or Issuer that was available to earlier lenders; and

(f) fees it charges for the use of the facility are designed to recover its costs of providing the facility, rather than generating additional income.

7.3.17 Business cessation plan

(1) An Authorised Crowdfunding Platform must:

(a) maintain a business cessation plan that sets out appropriate contingency arrangements to ensure the orderly administration of Permitted Loans in the event that it ceases to carry on its business (including details of how any Loan Administrator, administrator and/or nominee company will continue to operate following the cessation of business); and

(b) ensure, as far as reasonably practicable, that the contingency arrangements can be implemented if necessary.

7.3.18 AFSA power to impose a prohibition or requirement

(1) The AFSA may prohibit an Authorised Crowdfunding Platform from:

(a) entering into certain specified transactions or agreements or types of transactions or agreements; or

(b) outsourcing any of its functions or activities to a third party.

(2) The AFSA may, by written notice or guidance, set fees payable by an Authorised Crowdfunding Platforms to the AFSA on certain specified transactions or types of transactions.

7.3.19 Complaints

(1) An Authorised Crowdfunding Platform shall establish and maintain written policies and procedures to resolve complaints made against it or other parties (including Clients) in a fair and timely manner.

(2) An Authorised Crowdfunding Platform must provide, in a clear and conspicuous manner: on its website or websites; in all physical locations; and in any other location the AFSA may prescribe, the following disclosures:

(a) the mailing address, email address and telephone number for the receipt of complaints;

(b) a statement that the complainant may also bring his or her complaint to the attention of the AFSA;

(c) the AFSA's mailing address, website and telephone number; and

(d) such other information as the AFSA may require.

(3) An Authorised Crowdfunding Platform shall report to the AFSA any change in its complaints policies or procedures within ten days of such change being made.

(4) An Authorised Crowdfunding Platform must maintain a record of any complaint made against it or other parties (including Clients) for a minimum period of six years from the date of receipt of the complaint.

7.3.20 Obligation to report transactions

(1) An Authorised Crowdfunding Platform shall report to the AFSA details of transactions which are executed through its platform.

(2) The AFSA may, by written notice or Guidance, specify:

(a) the information to be included in reports made under (1); and

(b) the manner in which such reports are to be made.

7.3.21 Cooling-off period

(1) An Authorised Crowdfunding Platform must ensure that lenders or Investors who have committed to providing funding to a particular Borrower or purchasing an Permitted Investment or Permitted Loan from a particular Issuer or Borrower may withdraw that commitment, without any penalty and without giving a reason, during the cooling-off period.

(2) In (1), "cooling-off period" means the period of at least 48 hours starting at the end of the Commitment Period.

7.3.22 Target funding amount

(1) An Authorised Crowdfunding Platform must ensure that all loan proceeds are only provided to the Borrower or offering proceeds are only provided to the Investor when the aggregate capital raised from all lenders or Investors is equal to or greater than the target funding amount and allow all lenders or Investors to cancel their commitments to lend or invest, as the AFSA shall determine appropriate.

7.3.23 Lending and Investment limits

(1) An Authorised Crowdfunding Platform must maintain effective systems and controls to ensure that a Retail Lender or Retail Investor using its service does not lend or Invest, in respect of any single Borrower or Issuer and in aggregate calculated over a period of 12 months, an amount which exceeds the greater of:

(a) USD 2,000; or

(b) the lesser of

(i) 10 percent of the annual income; or

(ii) 5 percent of net worth of such Retail Lender or Retail Investor (excluding the value of the primary residence), up to a maximum aggregate amount of USD100,000.

7.3.24 Fundraising limits

(1) An Authorised Crowdfunding Platform must maintain effective systems and controls to ensure that:

(a) a Borrower does not borrow from:

(i) Retail Lenders more than USD 5,000,000 in total; and

(ii) Accredited Lenders more than USD 50,000,000 in total; and/or

(b) the total aggregate consideration for the Permitted Investments offered by an Issuer to:

(i) Retail Investors using its service is USD 5,000,000 or less; and

(ii) Accredited Investors using its service is USD 50,000,000 or less;

or an equivalent amount in another currency, calculated over a period of 12 months.

7.3.25 Market Rules

(1) The issue of Permitted Investments or Debentures may result in the application of requirements under the Markets Rules (MAR) such as Market Abuse provisions or, if an offer is not an Exempt Offer or offer of Securities by way of placement, Prospectus requirements.

7.4. Additional Requirements for Loan Crowdfunding Platforms

7.4.1 Written loan agreement

(1) A Loan Crowdfunding Platform must ensure that, when a Permitted Loan is made using its service, there is a written loan agreement in place between the Borrower and lender that is legally enforceable and sets out sufficient details of the loan, the terms of repayment and the rights and obligations of the Borrower and lender.

7.4.2 Loan Administration

(1) A Loan Crowdfunding Platform must have in place arrangements to administer the collection of amounts due and payable under a Permitted Loan.

(2) The arrangements in (1) shall include procedures for taking steps to collect overdue amounts and/or enforce a Permitted Loan in default on behalf of lenders including such steps as are necessary to enforce any security or apply any collateral that the Borrower may have provided in connection with the Permitted Loan;

(3) The arrangements in (1) may be carried out by the Loan Crowdfunding Platform by itself or by such other Person as the Loan Crowdfunding Platform may appoint (a "**Loan Administrator**").